

FILED

AUG 13 2020

CARMELITA REEDER SHINN
CLERK, U.S. DISTRICT COURT
DEPUTYIN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

Name (under which you were convicted): <u>David George Clark</u>		Docket or Case No.: <u>CIV-20-807-R</u>
Place of Confinement: <u>Cimarron Correctional Facility</u>	Prisoner No.: <u>640457</u>	
Petitioner (include the name under which you were convicted): <u>David George Clark</u>	Respondent (authorized person having custody of petitioner): <u>Oklahoma Dept. of Corrections</u>	
The Attorney General of the State of:		

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2254

- (a) Name and location of court that entered the judgment of conviction you are challenging:
Tulsa County Courthouse ~~Tulsa, Ok~~
500 S. Denver Ave Ste. 200 or 900
Tulsa, Ok 74103

(b) Criminal docket or case number (if you know): CF 2010-1906
- (a) Date of the judgment of conviction (if you know): May 12th, 2011

(b) Date of sentencing: May 12th, 2011
- Length of sentence: 35 yrs. C.C.
- In this case, were you convicted on more than one count or of more than one crime? ☒ Yes ☐ No
- Identify all crimes of which you were convicted and sentenced in this case: Lewd Mol.
Sexual Abuse and Kidnapping.
- (a) What was your plea? (Check one)

<input type="checkbox"/> (1) Not guilty	<input type="checkbox"/> (3) Nolo contendere (no contest)
<input checked="" type="checkbox"/> (2) Guilty	<input type="checkbox"/> (4) Insanity plea

(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? To all.

(c) If you went to trial, what kind of trial did you have? (Check one)

☐ Jury ☒ Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

☐ Yes ☒ No

8. Did you appeal from the judgment of conviction?

☐ Yes ☒ No

9. If you did appeal, answer the following:

(a) Name of court: _____

(b) Docket or case number (if you know): _____

(c) Result: _____

(d) Date of result (if you know): _____

(e) Citation to the case (if you know): _____

(f) Grounds raised: _____

(g) Did you seek further review by a higher state court?

☐ Yes ☒ No

If yes, answer the following:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Result: _____

(4) Date of result (if you know): _____

(5) Citation to the case (if you know): _____

(6) Grounds raised: _____

(h) Did you file a petition for certiorari in the United States Supreme Court?

☐ Yes

☒ No

If yes, answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court? ☒ Yes ☐ No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: Tulsa County

(2) Docket or case number (if you know): CF 2010-1906

(3) Date of filing (if you know): 4-20-20 or before

(4) Nature of the proceeding: Dismissed Post-Conviction Relief

(5) Grounds raised: federal - tribal relations, the statutes governing his crimes, hearsay rules, dismissals, intimidation, and competency proceedings.

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes

☒ No

(7) Result: Dismissed

(8) Date of result (if you know): 4-27-20

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: Tulsa County

(2) Docket or case number (if you know): CF 2010-1906

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☒ No

(7) Result: Dismissed

(8) Date of result (if you know): March 19, 2018

(c) If you filed any third petition, application, or motion, give the same information: I put this on #1

(1) Name of court: Tulsa County Courthouse

(2) Docket or case number (if you know): CF-2010-1906

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: Challenging the conviction & sentence

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☒ No

(7) Result: Dismissed

(8) Date of result (if you know): March 14, 2018

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

- (1) First petition: ☐ Yes ☒ No
 (2) Second petition: ☐ Yes ☒ No
 (3) Third petition: ☐ Yes ☒ No

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

Ineffective assistance of counsel and
born mentally challenged.

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: No Jurisdiction within Indian
Country lands.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Thus when the officials acting in and for the
State of Oklahoma held Appellant subject to state court
proceedings under allegation of violating state laws, those
officials acted outside of their scope of authority and
thus abrogated their Eleventh Amendment immunity and
are liable for the damages suffered and losses sustained
by the Appellant.

(b) If you did not exhaust your state remedies on Ground One, explain why:

Therefore the
Appellant has nothing to exhaust at a state
court level... State of Oklahoma, its officials and
employees have not the adequate authority to act
on the subject of the Appellant complaint. That
authority rests with the Federal Government
as stipulated in the Treaty.

(c) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

☐ Yes

☒ No

(2) If you did not raise this issue in your direct appeal, explain why:

Ineffective
assistance of counsel and born mentally
challenged.

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Post-Conviction ReliefName and location of the court where the motion or petition was filed: Tulsa CountyCourthouse 500 S. Denver Ave Tulsa Ok 74103Docket or case number (if you know): CF 2010-1906Date of the court's decision: 4-20-20 or 4-27-20

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☒ No(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☒ No(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

Ineffective assistance of counsel and born mentally challenged.(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: None**GROUND TWO:**Born mentally challenged.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

My twin brother has cerebral palsy and I'm

8 minutes older than him.

(b) If you did not exhaust your state remedies on Ground Two, explain why:

Ineffective assistance of counsel, born mentally challenged and ~~permanently~~ my U.S. Constitutional rights has been violated over and over again.

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

☐ Yes

☒ No

(2) If you did not raise this issue in your direct appeal, explain why:

Ineffective assistance of counsel and born mentally challenged.

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒

Yes

☐

No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

Post-Conviction Relief

Name and location of the court where the motion or petition was filed:

Tulsa County Courthouse.

Docket or case number (if you know):

CF 2010-1906

Date of the court's decision:

dismissed 4-20-20

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition?

☐ Yes

☒ No

(4) Did you appeal from the denial of your motion or petition?

☐ Yes

☒ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☐ Yes

☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

Ineffective assistance of counsel and born mentally challenged.

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two : None.

GROUND THREE:

U.S. Constitution

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

By Federal Constitution it prohibits state governments from depriving you of life, liberty, or property without due process of law.

(b) If you did not exhaust your state remedies on Ground Three, explain why:

Same as #7 above which is ineffective assistance of counsel and born mentally challenged.

(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

☐ Yes

☒ No

(2) If you did not raise this issue in your direct appeal, explain why:

Same as b and #7 above.

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☒ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

☐ Yes ☒ No

(4) Did you appeal from the denial of your motion or petition?

☐ Yes ☒ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

Ineffective assistance of counsel and born mentally challenged.

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: *None.*

GROUND FOUR: *Prejudice*

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Between the years of 2000 to 2010 Tulsa County Police Department has harass, intimidated, threatened and etc. against me. On May of 2010 they kept their word by putting me away for good by false charges like

they told me. They even threatened to take my life if I did not confess to this falsehood.

(b) If you did not exhaust your state remedies on Ground Four, explain why:

Ineffective assistance of counsel and born mentally challenged also my U.S. Constitutional rights keeps getting violated.

(c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

☐ Yes

☒ No

(2) If you did not raise this issue in your direct appeal, explain why:

Ineffective assistance of counsel and born mentally challenged.

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes

☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

Post-Conviction Relief Application

Name and location of the court where the motion or petition was filed:

Tulsa County Court house 500 S. Denver Ave Tulsa OK 74103.

Docket or case number (if you know):

CF 2010-1906

Date of the court's decision:

4-27-20

Result (attach a copy of the court's opinion or order, if available):

dismissed

(3) Did you receive a hearing on your motion or petition?

☐ Yes

☒ No

(4) Did you appeal from the denial of your motion or petition?

☐ Yes

☒ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☐ Yes

☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

Ineffective assistance of counsel and born mentally challenged.

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four:

None for the fact is I'm illegally confined and sentenced.

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? ☐ Yes ☒ No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them:

All of them by ineffective assistance of counsel and born mentally challenged.

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

The U.S. Constitution Ground Three I recently got a Jailhouse Lawyer's Manual of some of the rights in it and I did not know what the U.S. Constitution was before hand.

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? ☐ Yes ☒ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available.

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? ☐ Yes ☒ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Christopher M. Gault

(b) At arraignment and plea: Christopher M. Gault

(c) At trial: Christopher M. Gault

(d) At sentencing: Christopher M. Gault

(e) On appeal:

(f) In any post-conviction proceeding:

(g) On appeal from any ruling against you in a post-conviction proceeding:

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? ☒ Yes ☐ No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

Tulsa County Courthouse 500 S. Denver Ave

Tulsa, Ok 74103

(b) Give the date the other sentence was imposed:

May 12th, 2011

(c) Give the length of the other sentence:

3 yrs. probation time.

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future?

☒ Yes☐ No

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.*

I have been denied the rights by the U.S. Constitution from day one of my sentence. I been in mental anguish, misery, and etc. I have been in fear of my life by Tulsa County and etc.

I'm a member of the Absentee Shawnee Tribe Roll No. 2188, Degree of Blood 1/4, D.O.B. 4-10-1982. The U.S. Supreme Court reversed Indians convictions so far in Creek's & Choctaw's Reservations that the lower courts ruled on.

My case was in Tulsa County which falls in Creek's Reservation jurisdiction and not State of Oklahoma furthermore by the Fifth Amendment no court can re-prosecute and etc. under the double-jeopardy claim by that U.S. Constitutional right.

I also filled this out like a regular habeas corpus action as well.

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -

- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief:

Revoke, Reversal or
Reversed Remedy - I have named these because
I would like my life back that got out short by
violations of the U.S. Constitution, order my release.

David Clark

Signature of Petitioner or Attorney (if any)

VERIFICATION

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on 7-25-20 (month, day, year).

Executed (signed) on 7-25-20 (date).

David Clark

Signature of Petitioner or Authorized
 Person Under 28 U.S.C. § 2242

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition.